

4-3-2017

## State v. Lopez Appellant's Brief Dckt. 44638

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Lopez Appellant's Brief Dckt. 44638" (2017). *Not Reported*. 3698.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/3698](https://digitalcommons.law.uidaho.edu/not_reported/3698)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555

BEN P. MCGREEVY  
Deputy State Appellate Public Defender  
I.S.B. #8712  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44638
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2015-17388
v.	)	
	)	
PETER JAMES LOPEZ,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Peter James Lopez pleaded guilty to felony possession of a controlled substance and a persistent violator sentencing enhancement. The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. After Mr. Lopez participated in a "rider," the district court relinquished jurisdiction and executed the underlying sentence. On appeal, Mr. Lopez asserts the district court abused its discretion when it relinquished jurisdiction.

## Statement of the Facts & Course of Proceedings

Boise Police Department officers stopped a vehicle driven by Mr. Lopez for failure to use the left turn signal. (Presentence Report (*hereinafter*, PSI), pp.148-49, 182.)<sup>1</sup> During the traffic stop, officers saw marijuana in the glove box when Mr. Lopez went to retrieve the vehicle's registration. (PSI, p.148.) Mr. Lopez reported he was on parole, and the officers had him exit the vehicle. (PSI, pp.148-49.) Mr. Lopez attempted to flee on foot after leaving the vehicle, but the officers tackled and arrested him. (PSI, p.149.) The officers searched Mr. Lopez's person incident to the arrest and found 3.0 grams of a substance that tested presumptively positive for heroin, 16.7 grams of a substance that tested presumptively positive for marijuana, and \$685.00 in cash. (PSI, pp.149, 184.) A drug dog alerted on the cash. (PSI, p.149.) Mr. Lopez admitted to selling narcotics during his interview. (PSI, p.149.)

The State charged Mr. Lopez by Information with one count of possession of a controlled substance, felony, I.C. § 37-2732(c), one count of resisting or obstructing officers, misdemeanor, I.C. § 18-705, one count of possession of a controlled substance, misdemeanor, I.C. § 37-2732(c), and one count of possession of drug paraphernalia, misdemeanor, I.C. § 37-2734A. (R., pp.34-35.) Mr. Lopez entered a not guilty plea to the charges. (See R., p.45.)

Mr. Lopez filed a motion to suppress (R., pp.58-59), which the district court denied after conducting a hearing (R., pp.86-88). The State then filed an Information Part II alleging Mr. Lopez was a persistent violator under I.C. § 19-2514. (R., pp.90-91.)

---

<sup>1</sup> All citations to the PSI refer to the 234-page PDF electronic version of the Presentence Report and attachments.

Pursuant to a plea agreement, Mr. Lopez subsequently agreed to plead guilty to felony possession of a controlled substance and the persistent violator sentencing enhancement. (R., pp.98, 104-111.) The State agreed to dismiss the other counts. (R., p.98.) The district court accepted Mr. Lopez's plea. (R., p.98.) The district court later imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.121-25.)

Mr. Lopez participated in a traditional rider at the Idaho State Correction Institution (ISCI). (PSI, pp.223-24.) After Mr. Lopez incurred a DOR for testing positive on a UA for methamphetamines, rider program staff recommended the district court consider relinquishing jurisdiction. (PSI, pp.223, 225, 227.) Mr. Lopez submitted a separate written statement, asking the district court consider not relinquishing him. (PSI, pp.229-30.) The district court then relinquished jurisdiction and executed the underlying sentence. (See R., pp.132-35.)

Mr. Lopez filed a Notice of Appeal timely from the district court's Order Declining Jurisdiction and Imposition of Judgment. (R., pp.137-39.)

Mr. Lopez also filed a Memorandum in Support of Motion to Reconsider Sentence. (Memorandum in Support of Motion to Reconsider Sentence, Jan. 31, 2017.) Although there was no separate motion, the district court treated the memorandum as an Idaho Criminal Rule 35 (Rule 35) motion for a reduction of sentence, and denied the Rule 35 motion. (Order Denying Rule 35 Motion, Feb. 24, 2017.) On appeal, Mr. Lopez does not challenge the denial of his Rule 35 motion.<sup>2</sup>

---

<sup>2</sup> The Idaho Supreme Court has held that "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion."

## ISSUE

Did the district court abuse its discretion when it relinquished jurisdiction?

## ARGUMENT

### The District Court Abused Its Discretion When It Relinquished Jurisdiction

Mr. Lopez asserts the district court abused its discretion when it relinquished jurisdiction in his case. An appellate court reviews a district court's decision to relinquish jurisdiction for an abuse of discretion. *State v. Merwin*, 131 Idaho 642, 648 (1998). The district court's discretion in deciding whether to relinquish jurisdiction is not limitless. *State v. Rhoades*, 122 Idaho 837, 837 (Ct. App. 1992).

When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

*State v. Hedger*, 115 Idaho 598, 600 (1989) (internal quotation marks omitted).

Mr. Lopez submits the district court abused its discretion when it relinquished jurisdiction. Mr. Lopez had been enrolled in Cognitive-Behavior Interventions for Substance Abuse and Thinking for a Change classes before he incurred the DOR for testing positive for methamphetamine. (PSI, pp.224-26.) In his written statement, Mr. Lopez stated, "I have a desire to change, it's like my heart and soul tells me one thing, but my body and the addict[ion] tells me another. I figured this would be a process, however I had no idea how hard it would be." (PSI, p.229.) He wrote, "I don't

---

*State v. Huffman*, 144 Idaho 201, 203 (2007). "An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information." *Id.*

want to make any excuses and I accept responsibility . . . I don't want to quit the program or give up on being sober." (PSI, p.229.)

Mr. Lopez explained that after he was "notified I would have to complete my 'rider' on the yard or [at] the I.S.C.I. main prison. . . . I knew it would be a struggle to complete the program." (PSI, p.230.) He stated, "I still don't understand completely why I didn't get sent to Cottonwood. But being addicted to substances, surrounded by other people who are addicted to substances, and in an environment where there are plenty of drugs . . . Again I don't want to make an excuse. All I want to address is that it was hard for ME . . . ." (PSI, p.230.)

Mr. Lopez also wrote, "I still want to change, I still want to complete the program. I need to change my affiliations, and thoughts." (PSI, p.230.) He further stated, "in 20 years I've never wanted to change as much as I do now." (PSI, p.230.)

In light of the contents of his written statement, Mr. Lopez submits the district court abused its discretion when it relinquished jurisdiction.

### CONCLUSION

For the above reasons, Mr. Lopez respectfully requests that this Court reduce his sentence as it deems appropriate.

DATED this 3<sup>rd</sup> day of April, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of April, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

PETER JAMES LOPEZ  
INMATE #74834  
ISCC  
PO BOX 70010  
BOISE ID 83707

RICHARD D GREENWOOD  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KYLE O SCHOU  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BPM/eas